

WAR CRIMES TRIBUNALS POST-NUREMBERG

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- I. Permanent war crimes tribunal proposed after Nuremberg and Tokyo; legislation drafted in UN in 1950's
- II. No permanent court for half-century, but Nuremberg and Tokyo influenced the laws that would lay the groundwork, including:
 - a. The Genocide Convention, 1948.
 - b. The Universal Declaration of Human Rights, 1948.
 - c. The Geneva Convention on the Laws and Customs of War, 1949
- III. Ad hoc tribunals convened in 1990's to try criminal defendants associated with the conflicts in the former Yugoslavia and Rwanda
- IV. International Criminal Tribunal for Rwanda (1995), Arusha, Tanzania
 - a. Finished 35 trials—5 acquittals. Another 27 defendants undergoing trial, 6 individuals are awaiting trial in detention; 18 others are still at large, some suspected to be dead
 - b. Conviction for "hate media" and "rape" as crime of genocide
 - c. Former prime minister Jean Kambanda pled guilty to genocide—life imprisonment
 - d. Human Rights Watch criticism—Slow pace, witnesses fearful to testify (three witnesses killed before or after testimony), too far for Rwandans to attend (part of goal of process is letting them see the trial), lack of Rwandan confidence (delays compared to typical 1-2 day Rwandan trial, lack of death penalty)
 - e. Rwanda now wants the trials back in their jurisdiction, waived death penalty (see ICC jurisdiction rules below)
- V. Other war crime tribunals—former Yugoslavia, Sierra Leone, East Timor and Cambodia)
 - a. May 1999-history made by indictment of sitting head of state on war crimes charges—Slobodan Milosevic (died in custody in 2006)
- VI. Permanent war crimes court, International Criminal Court, established in 2002
 - a. Founding treaty—Rome Statute of the ICC,
<http://untreaty.un.org/cod/icc/statute/rome.htm>
 - b. 105 states are members, but US, Russia, China, India, etc. (majority of world population) are not
 - c. U.S. even passed so-called "Hague Invasion Act" (2002)
 - d. Can only exercise jurisdiction if accused is of state party to the ICC treaty or accept the Court's jurisdiction, actions took place in state that is party, or referred by UN Security Council
 - e. Only can exercise jurisdiction if national courts unwilling or unable to prosecute

VII. International Criminal Court prosecutes individuals for:

- a. Genocide (killing, preventing births, etc. committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group)
- b. Crimes against humanity (an act of persecution or any large scale atrocities against a body of people)
- c. War crimes (Grave breaches of the Geneva Conventions, such as torture or inhumane treatment, wanton destruction or appropriation of property, taking hostages, etc.)
- d. "Aggression" included in Rome Statute but cannot be prosecuted until defined

VIII. Rights of accused in International Criminal Court:

- a. Presumed innocent unless proved guilty beyond reasonable doubt
- b. Fully informed of charges
- c. Appointed counsel
- d. Able to examine witnesses
- e. Speedy trial, subpoena power
- f. More procedural protections than Nuremberg or Tokyo, where unsworn affidavits admitted

IX. Four current ICC investigations, all in Africa: Northern Uganda, Democratic Republic of Congo, Central Africa Republic, Darfur

- a. Not much to show yet: 10 arrest warrants, two died, three in custody awaiting trial, five free

X. IMPORTANT QUESTION: #1: Do war crime tribunals help a country recover from war crimes?

- a. Yes: Establish rule of law, gain transparency, etc.—Helped Germany, Japan, Rwanda
- b. No: Should use truth and reconciliation commission instead—must have forgiveness to move on (South Africa allowed apartheid victims to publicly confront perpetrators and for those who committed the crimes to confess in public without fear of prosecution)
- c. Yes: Survey of several hundred victims of human rights abuse during the South African apartheid era, found that most felt the TRC had failed to achieve reconciliation between the black and white communities. Most felt that justice was a prerequisite for reconciliation rather than an alternative to it, and that the TRC had been weighted in favor of the perpetrators of abuse
- d. No: Only try the losers (WWII examples: firebombing of Dresden, Hiroshima, Nagasaki not tried)
- e. No: Makes war crimes too risk-free by providing all the procedural protections

XI. IMPORTANT QUESTION #2: Do tribunals help deter war crimes from occurring?

- A. Yes: UN Ass't. Secretary general and Register of Rwanda ICT Adama Dieng—rids the African continent of "culture of impunity"
- B. No: Lawless situations, and not enough high profile prosecutions yet to have deterrent effect
- C. What about Kenya?